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January 14, 1998

Via Facsimile

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Mr. Ralph Dollhopf
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United States Environmental
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Room 216
Grosse Ile, Michigan 48138-1697

**Re: Toledo Tie Treatment Site, Toledo, Ohio, Administrative Order, Docket No. V-
W-98-C-444**

Dear Ms. Perdomo and Mr. Dollhopf:

Kerr-McGee Chemical LLC (hereinafter "Kerr-McGee"), successor in interest to Kerr-McGee Chemical Corporation, the named respondent in the above-referenced Administrative Order, is submitting the following comments pursuant of Section XIV of the Order. Kerr-McGee requested a conference with USEPA pursuant to Section XIV, which was held on January 12. Kerr-McGee denies liability with respect to the Toledo Tie Treatment Site, and the various matters set forth in the Administrative Order. Without admitting liability of any kind, Kerr-McGee submits the following comments in response to the Administrative Order.

General Notices of Potential Liability were sent to numerous owners and operators at the Site, including the City of Toledo. The City holds a drainage easement for Williams Ditch, where USEPA has directed various removal activities to be undertaken. Property on both sides of Williams Ditch is owned by numerous parties other than Kerr-McGee. Yet *none* of these parties were named as respondents in the Administrative Order. Kerr-McGee objects to being the *only* party named in the Administrative Order to perform any remedial actions. Kerr-McGee

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questions why the Administrative Order was directed solely to Kerr-McGee when it is clear that there are numerous current owners and operators of the site who are liable for conditions at the site under Section 107 of CERCLA. Kerr-McGee is concerned that USEPA, in singling out Kerr-McGee as the sole recipient of an Administrative Order at this Site, has inadvertently sent a message to other PRP's that they need not cooperate or participate with Kerr-McGee in funding and performing any removal actions or other activities which ultimately may be required at the Site. Aside from the inequity of singling out Kerr-McGee as the sole recipient of the Administrative Order, Kerr-McGee is also concerned that the absence of any other respondents to the Administrative Order may cause ongoing operations at the Site to interfere with the performance or efficacy of any remedial actions which may ultimately be implemented at the Site.

Kerr-McGee also has the following comments regarding the terms and conditions of the Administrative Order and its attachments:

1. We object to the isolated recitation in Paragraph 10 of the Findings of Fact that: "On December 10, 1997 USEPA advised Kerr-McGee that containment and recovery efforts following a rain event were not satisfactory." Kerr-McGee specifically disputes this conclusion. The Findings of Fact fail to mention that recovery efforts were promptly initiated by Kerr-McGee at the request of USEPA in October, 1997 --- prior to the issuance of any Administrative Order in this matter, and recovery efforts were continued during inclement weather in November and December, 1997. In 1993, Ohio EPA documented the presence of significant accumulations of creosote in the sediments of Williams Ditch. More than four years passed before USEPA suddenly identified this condition as an emergency which required "time-critical" removal activities. Given the long period during which creosote-related compounds have been present in Williams Ditch, it is unlikely that any alleged shortcomings in Kerr-McGee's recovery efforts during the latter days of 1997, even if true, would have caused any greater or different environmental impact than what already existed at the Site prior to Kerr-McGee undertaking containment and recovery efforts in late 1997.

2. In Paragraph 3.3.3) of the Order, Respondent is directed to "...contain and remove all creosote contaminants that are migrating downstream in Williams Ditch..." and, at a minimum perform daily removal of all visible oil and oil sheen accumulated on the water surface at all current boom locations. Kerr-McGee questions whether it is practical and cost effective to remove accumulations of oil and sheen on a daily basis, because on some days only a *de minimis* amount of oil and sheen collects behind one or more of the current booms. Kerr-McGee suggests that the decision of the frequency of removal of oil and sheen accumulations should be a decision made in the field by its contractor, Hull & Associates, Inc. The effectiveness of a standard

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vacuum truck to recover oil or oil sheen will be limited once temperatures reach 15 to 20 degrees F, assuming no wind chill effects. Ambient air temperatures on the order of 25 degrees F and factoring in wind chill (should windy conditions exist) could increase the potential for equipment failure due to freezing of pumps couplings, hoses, recovery devices, etc. Moreover, such weather conditions, as a practical matter, eliminate any risk that downstream residents will come into contact with contaminants in the Ditch during the winter months.

3. Paragraph 3.3.3) of the Order also requires Kerr-McGee to clear the Ditch of ice at all times within a distance of ten feet upstream and downstream of all booms. While the rationale for this requirement is not set forth in the Order, the apparent concern is that floating oil or grease might be carried under the booms if ice forms on the surface of Williams Ditch. However, this requirement causes more problems than it solves. First, breaking ice manually (i.e. with shovels, picks, etc.) will be difficult because access to the Ditch is limited along the north and west sides of the ditch (LBA Printing and the Pepsi Co.). Second, ice removal by mechanical means could increase the potential for sediment disturbance, hence increasing the likelihood for additional product release to the waterway. When ice forms along the edges of the Ditch, vegetation will be frozen as well. Based upon observations at the site, removal of ice will likely result in vegetation being pulled out by the roots and releasing additional product. This is especially true beyond Boom #4, where the water depth is particularly shallow (less than 12"). It is likely that during extended periods of cold weather, ice thickness could reach 4" to 6". Third, removing ice from the front of the booms will most likely have to be accomplished via excavator to reach all of the way across the Ditch. The stability of the Ditch bank has not been assessed, but based upon observations at the site, any heavy equipment operating near the top of the bank should stay back a reasonable distance. This could limit the effectiveness of the approach. Fourth, from a human health perspective, encapsulation of floating oil or oil sheen in the ice and/or ice forming a barrier against contact with the sediment and water may actually reduce the risk potential. Fifth, when ice is cleared from the vicinity of the booms, is it expected that the ice would be removed (off-site)? If it becomes necessary to undertake this activity, it may prove more desirable to manage the ice on-site.

4. Kerr-McGee requests that USEPA reconsider whether all current booms must be maintained on Williams Ditch to contain oil and oil sheen. Currently, there are two hard booms, 7 absorbent booms and 2 AbTech booms in place. The Order appears to require that ice must be cleared from all of these booms. Relocation and/or removal of some booms may be in order. This is particularly the case with respect to absorbent booms #5 and #6, near Hill Avenue, where there is a significant amount of vegetation growing in the ditch. Based upon current site conditions, access at Hill Avenue will be limited. Soft ground conditions, the proximity of Hill Avenue, the limited space for truck parking along Hill Avenue and the current use of the

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property to the east of the Ditch could pose significant logistical and safety problems.¹ The most effective measure of containing oil and oil sheen to date has been the hard booms. The AbTech absorbent booms, which were first installed on November 29, 1997 have had limited effectiveness in absorbing oil sheen. All of these considerations strongly support a reconsideration of the number of booms which are necessary, along with the need for continuous removal of ice from the vicinity of these booms. We understand from the January 12 conference that alternatives, such as the use of an oil/water separator, may be acceptable to USEPA as an alternative to the current system of booms.

5. There is an ambiguity throughout the Order with respect to what activities USEPA considers to be "time critical" and what activities are "non-time critical." Ohio EPA has apparently documented the presence of creosote-related compounds in Williams Ditch for some time without any apparent impact to the public. It is questionable whether immediate removal of creosote compounds is necessary. Winter conditions mean that snow and ice will accumulate on the slopes (and banks) of Williams Ditch. These conditions will create an increased hazard of slips and falls for contractors and their employees working around the Ditch. The need for daily removal of oil and sheen should be balanced against the safety risk to contractors working under adverse winter conditions around Williams Ditch. It is questionable whether the remedial actions at Williams Ditch should be treated as a time-critical removal action. In fact, the Ohio Department of Health indicated that any immediate threat to the safety or health of the public could be adequately addressed by restricting access to Williams Ditch, since the most likely exposure route for members of the public would be by direct contact with sediments in Williams Ditch. See Health Consultation, Toledo Tie Treatment Site, CERCLIS No. OHD987049202, December 5, 1995 at p. 7. It would be preferable to proceed in accordance with the normal Remedial Investigation/Feasibility Study procedures specified in 40 CFR §300.430. These procedures would likely result in a more reasoned selection of an appropriate and effective remedy than the EE/CA process dictated by the Administrative Order.

6. Section 3 of the Order also reference the requirements of USEPA's "Off-Site" rule, 40 CFR §300.440. Currently, Kerr-McGee is attempting to make arrangements with the City of Toledo to discharge waters collected from Williams Ditch, which contain accumulations of oil or sheen, into the City of Toledo POTW. These waters have been analyzed and can be discharged in compliance with the City of Toledo's pretreatment standards. Kerr-McGee views this arrangement as complying with the requirements of 40 CFR §300.440. However, Kerr-McGee was advised on January 9, 1998 that the City of Toledo was rescinding its approval to discharge

¹ It may prove necessary to require traffic controls on Hill Avenue, including partial lane closure during recovery activities. These traffic controls will require action from the City of Toledo.

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these waters into its POTW, apparently under the mistaken belief that it (1) must become a RCRA-permitted facility before receiving such waters; and (2) that it will incur additional liability by accepting such materials into its POTW. The rescission of permission to discharge these waters into the Toledo POTW will significantly increase the response costs to handle these waters. We will attempt to contact the City of Toledo to obtain a reconsideration of this decision. It is counterproductive to prohibit the use of the Toledo POTW for disposal and treatment of these waters.

7. The various reports and work plans mandated by Sections 3.1 through 3.3 of the Order are required to be submitted under relatively tight deadlines, from 30 to 120 days after the effective date of the Order. Unfortunately, this deadline requires that most work be done during periods of inclement winter weather in the Toledo area, and prohibits development of representative data during other seasons at the Site. Some modification of the schedules referenced in Sections 3.1 through 3.3 of the Order may be necessary if data collection efforts are hampered by adverse weather conditions or if data collected during these periods is not representative or does not accurately portray conditions at the Site.

8. Paragraphs 7 and 8 of the Administrative Order (p.12) appear to be surplusage, and reference legal requirements of CERCLA which may or may not apply to any activities which Kerr-McGee will undertake at the Site. However, the language of Paragraph 7 appears to contradict the provisions of Section 121(e) of CERCLA, 42 USC §9621(e), since that section provides that no federal, state or local permits are required for remedial actions conducted entirely on-site. We understand from the January 12 conference that USEPA agrees that no federal, state or local permits are required for remedial actions conducted on-site, but that any substantive standards of federal, state or local law must be met. If USEPA intends by these paragraphs to do anything more than simply reference the provisions of CERCLA which are cited in these paragraphs, USEPA should advise Kerr-McGee of what additional requirements it seeks to impose. With respect to references to Sections 103 CERCLA and Section 304 of the Emergency Planning and Community Right To Know Act in Paragraph 8, we understand these references to apply prospectively, and the obligations under these sections are not triggered by current conditions in Williams Ditch.

9. Section VIII of the Order requires reimbursement for all of Respondent's "oversight costs" in overseeing the implementation of the requirements of this Order. However, there is authority for the proposition that oversight costs are not recoverable and that claim for reimbursement which is supported by nothing more than a "cost summary" are inadequately documented.

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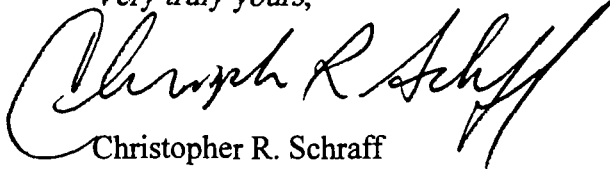
10. The Administrative Order, and any work or activity performed pursuant to the Order, does not constitute, and should not be construed as the waiver of any claim against the Superfund or against any potentially responsible party under CERCLA.

11. In light of the safety concerns raised in this letter with respect to the required actions under Paragraph 3 of the Order, USEPA cannot expect any party to waive any rights or claims which may exist against the United States in the event of personal injury or property damage arising wholly or in part from actions mandated by the Administrative Order, especially where these actions present a health or safety risk. USEPA's disclaimer of liability for such injuries or damage is not binding upon any person performing such work at the direction or command of USEPA.

Kerr-McGee appreciates the opportunity to make these comments regarding the substance of the Administrative Order. Kerr-McGee reserves the right to supplement these comments after any conference subsequently scheduled with USEPA, or at a later date as new or additional information comes to light regarding conditions at the Site.

If you have any questions or comments regarding the foregoing comments, please feel free to contact me at your convenience.

Very truly yours,



Christopher R. Schraff

Attorney for Kerr-McGee Chemical LLC

cc: W.O. Green III, Esq.

K. Watson

S. Lockhart